

STATE OF VERMONT  
HUMAN RIGHTS COMMISSION

Rita Smith	)	
Charging Party,	)	
v.	)	HRC Charge No. HV09-0011
	)	HUD Charge No. 01-08-0576-8
Estier Investment Group LLC,	)	HUD 504 Charge No. 01-08-0124-4
d/b/a Lane Shops Apartments and)	)	
Montpelier Housing Authority	)	
Respondents.	)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

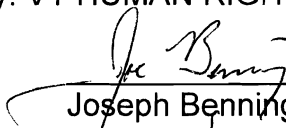
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Estier Investment Group LLC d/b/a Lane Shop Apartments and Montpelier Housing Authority, the Respondents, illegally discriminated against Rita Smith, the Charging Party, in housing on the basis of disability in violation of 9 V.S.A. §4503 of the Vermont Fair Housing and Public Accommodations Act.

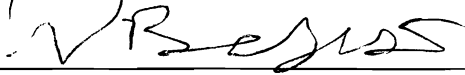
Joseph Benning, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Shirley Boyd-Hill	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input checked="" type="checkbox"/>	Recused <input type="checkbox"/>
Mary Marzec-Gerrior	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Entry: Reasonable grounds <input checked="" type="checkbox"/> Motion failed <input type="checkbox"/>				

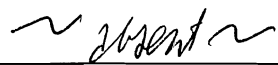
2. Because the Human Rights Commissioners found that there are reasonable grounds to believe that Estier Investment Group LLC d/b/a Lane Shop Apartments and Montpelier Housing Authority, the Respondents, illegally discriminated against Rita Smith, the Charging Party, in violation of the Vermont Fair Housing and Public Accommodations Act, a final attempt to resolve Charge No. HV09-0011 through settlement shall be completed by June 18, 2009.


Dated at Montpelier, Vermont this 18<sup>th</sup> day of December 2008.

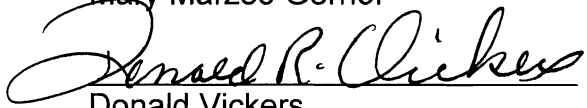
By: VT HUMAN RIGHTS COMMISSION

  
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Joseph Benning, Chair

  
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Nathan Besio

  
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Shirley Boyd-Hill

  
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Mary Marzec-Gerrier

  
\_\_\_\_\_  
Donald Vickers

INVESTIGATIVE REPORT  
HRC Case No.: HV09-0011  
HUD Case No. 01-08-0576-8  
HUD 504 Case No. 01-08-0124-4

**CHARGING PARTY:** Rita Smith

**RESPONDENTS:** Estier Investment Group LLC, d/b/a Lane Shops  
Apartments; Montpelier Housing Authority

**CHARGE:** housing/disability

**SUMMARY OF CHARGE:** In her Charge of Discrimination in housing filed November 5, 2008, Rita Smith states she is an individual with an ambulatory disability. She alleges that the owners and managers of her residence, Lane Shops Apartments, have refused to provide her with the reasonable accommodation of a designated disability parking space near her apartment.

**SUMMARY OF RESPONSE:** In their joint response of November 11, 2008, Estier Investment Group LLC and Montpelier Housing Authority denied discriminating against Ms. Smith, asserting they had complied with federal regulations specifying the requisite number of designated disability parking spaces.

**PRELIMINARY RECOMMENDATIONS:** This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are reasonable grounds to believe that Estier Investment Group LLC and Montpelier Housing Authority illegally discriminated against Rita Smith because of her disability in violation of 9 V.S.A. §4503.

## **INTERVIEWS**

= Rita Smith, 11/5/08, 11/14/08

## **DOCUMENTS**

= Charge of Discrimination, 11/5/08

= Respondents' response to Charge, 11/11/08

## **SITE VISIT**

= 11/17/08

## **CASE ELEMENTS**

This case is based on direct evidence. Therefore, it is not necessary to establish prima facie case elements to analyze the merits of Ms. Smith's complaint.

### **I. FACTS**

#### **A. UNDISPUTED FACTS**

The facts detailed in paragraphs 1-12, below, are not disputed by the parties.

1. Rita Smith resides in the Lane Shops Apartments in Montpelier.

2. Ms. Smith owns and drives a motor vehicle.

3. The Lane Shops Apartments are owned by Estier Investment Group LLC and managed by Montpelier Housing Authority (MHA).

JoAnn Troiano is the Executive Director of MHA.

4. Rita Smith has a disability placard issued by the Vermont

Department of Motor Vehicles based upon ambulatory disability.

5. The term "ambulatory disability" as applied by the Department of Motor Vehicles is defined by Vermont's statutes (23 VSA §304a(a)(1)) as follows:

"Ambulatory disability" means an impairment which prevents or impedes walking. A person shall be considered to have an ambulatory disability if he or she is a person who:

(A) cannot walk 200 feet without stopping to rest; or

(B) cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(C) is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest; or

(D) uses portable oxygen; or

(E) has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(F) is severely limited in his or her ability to walk due to an arthritic, neurological, or orthopedic condition.

6. Pursuant to Vermont's statutes, the Vermont Department of Motor Vehicles may issue a disability plate or placard only if the individual's ambulatory disability is verified by a licensed physician, certified physician's assistant, or licensed advanced practice registered nurse. (23 VSA §304a(b)(1).)

7. The Lane Shops Apartments has a total of 50 residential units

in four buildings. On the date Ms. Smith filed her Charge of Discrimination, there were seven Lane Shops residents who held disability plates or placards.

8. The Lane Shops Apartments has 31 parking spaces. At the time Ms. Smith filed her Charge of Discrimination, five of these spaces were designated as disability parking spaces. None of the disability parking spaces are marked as being for tenants only.

9. Rita Smith lives in Building C of Lane Shops Apartments. Ms. Smith is one of six residents of Building C who hold disability plates or placards.

10. There is a private two-way roadway between Building C and the parking spaces in closest proximity to Building C.

11. The federal Department of Housing and Urban Development (HUD) provides some subsidy funding for the operation of Lane Shops Apartments.

12. In a letter dated August 27, 2008, Ms. Smith complained to HUD regarding the failure of Lane Shops Apartments to provide her with a disability parking space in close proximity to Building C. HUD forwarded that letter to the respondents.

## **B. SITE INSPECTION**

On November 17, 2008, the undersigned investigator inspected the parking areas of Lane Shops Apartments and determined the following. (See attached diagram.)

13. Building C has three exterior doors (hereafter referred to as the southerly, central and northerly doorways).

14. Immediately across the roadway from Building C are the parking spaces in closest proximity to the building. There are four parking spaces in this parking area, three of which are designated as disability parking spaces.

15. Regarding the Lane Shops' three designated disability parking spaces in closest proximity to Building C, the most northerly of those three spaces is approximately the following distances from the three doorways of Building C:

- > Northerly doorway: 111 feet
- > Central doorway: 55 feet
- > Southerly doorway: 93 feet

The most southerly of those three spaces is approximately the following distances from the three doorways of Building C:

- > Northerly doorway: 136 feet
- > Central doorway: 80 feet
- > Southerly doorway: 68 feet

16. A fourth designated disability space is near Building D. That space is approximately the following distances from the three doorways of Building C:

- > Northerly doorway: 163 feet
- > Central doorway: 107 feet
- > Southerly doorway: 146 feet

17. The one remaining designated disability space is near Building A. That space is approximately the following distances from the three doorways of Building C:

- > Northerly doorway: 385 feet
- > Central doorway: 297 feet
- > Southerly doorway: 265 feet

18. It does not appear feasible, except by imposing an undue burden on the respondents, to add parking spaces at the Lane Shops Apartments, at least so long as the private roadway in front of Building C is maintained as a two-way roadway.

19. The asphalt surface of the parking areas at and around the disability parking spaces in closest proximity to Building C and in the area near Building D, as well as the walkway between those parking areas is quite worn and rough and could be a barrier to persons with ambulatory disabilities.



### **C. STATEMENTS OF RITA SMITH**

Ms. Smith stated as follows:

20. When she needs to park her car, Ms. Smith “frequently” finds that the parking spaces in closest proximity to Building C are occupied, and, at such times, she frequently finds that no spaces are available in the next closest area, alongside Building D. At those times, Ms. Smith has only one parking option remaining: to park in the lot near Building A.

21. Ms. Smith is having increasing difficulty walking, such that she is in “excruciating pain” when she must walk from the lot near Building A to her home in Building C.

22. Ms. Smith would like to have a parking space that is close to Building C and that is designated solely for her use.

### **D. STATEMENTS OF MONTPELIER HOUSING AUTHORITY**

23. In its response to the Charge of Discrimination, MHA, through its attorney, stated that HUD requires Lane Shops Apartments to designate one disability parking space for each accessible unit in the complex, and that it has complied with that requirement: there are five accessible units and five disability parking spaces. MHA

acknowledged that the disability spaces are “occupied on a first come first served basis” and are not designated for tenants only.

## **II. ANALYSIS**

Vermont's Fair Housing and Public Accommodations Act  
(hereafter VFHPA) at 9 V.S.A. §4503(a)(10) states:

It shall be unlawful for any person:

(10) To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

VFHPA §4504(4) states:

The provisions of section 4503 of this title relating to the rental of a dwelling shall not apply:

(4) to limit a landlord's right to establish and enforce legitimate business practices necessary to protect and manage the rental property, such as the use of references. However, this subdivision shall not be used as a pretext for discrimination in violation of this section.

The Vermont Supreme Court has stated that it looks to the federal Fair Housing Act in construing VFHPA. Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 243 (1995). For that reason, and because there is a dearth of Vermont case law on point, some federal case law and regulations are cited in the analysis below.

## **A. REASONABLE ACCOMMODATION**

This case is based on direct evidence of discrimination; therefore, it is not necessary to establish a prima facie case nor go through a burden shifting analysis.

It appears 1) that Ms. Smith is a person with an ambulatory disability, 2) that via communication from HUD, respondents were put on notice of Ms. Smith's ambulatory disability and her request that Lane Shops Apartments implement a policy that would assure her a disability parking space in closest proximity to Building C, and 3) that no such policy was implemented. The remaining question is simply whether Ms. Smith's request for accommodation was a reasonable one.

Federal regulations implementing the federal Fair Housing Act are relevant here. 24 CFR §100.204 (revised 4/1/08) states in pertinent part:

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following example[]:

\* \* \* \*

Progress Gardens is a 300 unit apartment complex with 450

parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of Sec. 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

Courts have consistently ruled in a manner consistent with this regulation, holding that the federal Fair Housing Act requires landlords to accommodate tenants with ambulatory disabilities by providing disability parking spaces in close proximity to their residential units. See, e.g., Shapiro v. Cadman Towers, Inc., 51 F.3d 328 (2d Cir. 1995); Jankowski Lee & Associates v. Cisneros, 91 F.3d 891 (7th Cir. 1996). See also, Secretary of HUD v. Dedham Housing Authority, 2 Fair Housing-Fair Lending 25,015 (HUDALJ Nov. 15, 1991).

The respondents face an obvious difficulty meeting Ms. Smith's request for accommodation: There are only four parking spaces in closest proximity to Building C, while there are six current residents of Building C who possess disability placards. Further, this investigation

believes it is not feasible to add parking spaces. This investigation has not found any case law in which an identical difficulty was presented.<sup>1</sup>

Even if it is not feasible for the respondents to fully meet Ms. Smith's request, the respondents, nonetheless, have an obligation to take whatever reasonable steps are available to effectively address Ms. Smith's disability-related needs.<sup>2</sup> For example, the likelihood that Ms. Smith would have access to one of the parking spaces closest to Building C would be greatly enhanced if all four of those spaces were designated as disability parking spaces for tenants only. If, at any particular time, all four of those parking spaces were in use, Ms. Smith's inconvenience and discomfort could be minimized by designating additional nearby parking spaces as disability spaces for tenants only. These examples are illustrative only. The essential point is that it is insufficient for respondents to simply deny the requested

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<sup>1</sup> An analogy could, however, be drawn to an aspect of the facts in Southern California Housing Rights Center v. Los Feliz Towers Homeowners Association, 426 F.Supp.2d 1061, 1067 (C.D.Cal. 2005). In that case, a plaintiff condominium owner requested that her condominium association designate a certain parking space solely for her use to accommodate her disability. Other residents with disabilities had requested the same parking space. The court stated, "Defendant's argument that it would not be fair to give the [parking] space to [plaintiff] when other disabled residents have also requested the space is unpersuasive. The federal Fair Housing Act requires courts to conduct an individualized inquiry. The issue is whether Defendant's parking policies affect [plaintiff] differently from other disabled owners in the Homeowners' Association."

<sup>2</sup> See Statement of the Department of Housing and Urban Development and the Department of Justice regarding Reasonable Accommodations Under the Fair Housing Act, 2004, at page 7 ("If an alternative accommodation would effectively meet the requester's disability-related needs and

accommodation; respondents are required by Vermont's fair housing statutes to take affirmative measures to assure that Ms. Smith has access to a parking space as close to Building C as reasonably possible.

Altogether aside from Ms. Smith's request for accommodation, this investigation believes that the uneven surface of the pavement at and around the three disability parking spaces across from Building C and the disability parking space near Building D as well as along the walkway between those parking areas could be a barrier to persons with ambulatory disabilities. This investigation also believes that eliminating this barrier is readily achievable.

**PRELIMINARY RECOMMENDATIONS:** This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are reasonable grounds to believe that Estier Investment Group LLC and Montpelier Housing Authority illegally discriminated against Rita Smith because of her disability in violation of 9 V.S.A. §4503.

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Ellen Maxon  
Investigator

APPROVED:

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Robert Appel  
Executive Director

Date